

**REMARKS**

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

The following remarks are in response to the Office Action mailed May 5, 2005.

Applicant affirms that Applicant has elected claims 18-26 without traverse. Applicant reserves the right to file one or more divisional applications corresponding to non-elected claims 1-17 and 27-41 at a later date.

In the Office Action, page 2, the Examiner rejected claims "16-26" and "16-25". It is believed these are inadvertent typographical errors since claims 16 and 17 were in the elected group of claims 16-26 but not in the elected species of claims 18-26. It is assumed that the rejected claims are 18-26 and 18-25, respectively.

Similarly, PTOL-326 listed claims "18-28" as being rejected. It appears the rejected claims should have been 18-26.

Claims 22 and 26, which were previously dependant on claim 18, have each been amended to independent form. In other words, each claim claims the same subject matter it did prior to the amendment. The amendment is not narrowing and is not being entered in response to the office action.

Claims 18-26 were rejected under 35 U.S.C. §102(a) as being anticipated by Thorton, U.S. Patent No. 6,751,454, ("Thorton"). However, Thorton does not disclose every element recited in the claimed invention.

Specifically, independent claim 18 recites, among other things, a portable communications device that combines an input for receiving signals corresponding with sampled portions of full audio works, a database of audio work comparison information for use in identifying full audio works, and a communications module for communicating with an audio purchasing

service. The combination also includes a processor operative to compare the sampled portion against the database to identify the full audio work and present purchasing information.

However, *Thorton* does not even disclose entire elements of the claim let alone the claimed combination of features. *Thorton* discloses a portable communications device such as a cell phone which allows a user to browse and select an audio recording on the world-wide-web (See col. 5, lns. 38-46 and col. 7, lns. 7-28). After the user has selected an audio recording, the phone changes its data connection with WWW server to a voice connection with an IVR (i.e., voice responsive telephone equipment) so that the user can listen to the audio recording (See Figure 1, col. 5, lns. 46-52 and col. 7, lns. 29-37). After the user finishes listening to the recording, the portable device is reconnected to the web, and the web provides the portable device with purchasing information (See col. 7, lns 38-52).

In other words, the portable device of *Thorton* does not have a processor operative to compare an inputted sampled portion of a full audio recording against a database of information and present the user the identity and purchasing information of the audio recording. Thus, *Thorton* does not teach or suggest every element recited in claim 18.

Applicant notes that while the title, abstract, and last paragraph of *Thorton* happen to mention a "method of sampling music," *Thorton* apparently uses the phrase "sampling music" in the same way that one may "sample" food. And regardless of *Thorton's* intended use of the term, the fact remains that *Thorton* does not teach all of the elements of the claimed invention.

Since *Thorton* does not teach or suggest every element recited in claim 18, it also does not teach or suggest every

element recited in claims 19-26 because they depend from claim 18.

Claims 18-26 were also rejected under 35 U.S.C. §102(a) as being anticipated by *Draggon et al.*, U.S. Patent No. 6,529,804, ("*Draggon*"), *Treyz*, U.S. Patent No. 6,587,835 ("*Treyz*") and *Watanabe*, U.S. Patent No. 6,247,804 ("*Watanabe*").

*Draggon* discloses a wireless programmable multimedia device (20 in Fig. 1) which is located in a vehicle and allows a user to tune to not just AM or FM radio frequency bands but also TV audio and digital audio broadcasts (See col. 3, lns. 43-50). The Examiner has not identified any portion of *Draggon* that discloses a portable communications device having the processor recited in claims 18-25.

*Treyz* discloses a handheld computing device which allows a user to shop or download music or the like to the handheld computing device (See col. 3, last paragraph). However, like *Thorton* and *Draggon*, the Examiner has not identified any portion of *Treyz* that has an input receiving a sampled portion of the audio work and a processor that compares the sampled portion against a database of audio work information in order to identify the audio work and present purchasing information to the user.

Regarding *Watanabe*, claims 18-25 are distinguishable over *Watanabe* because *Watanabe* does not relate to a portable communications device. *Watanabe* discloses an ink jet recording device, not a communications device. *Watanabe* also does not disclose each and every element recited in independent claim 18. For example, the Examiner has not identified any portion of the ink jet device of *Watanabe* that discloses a processor for comparing a sampled audio work against a database of information.

Each of claims 18-26 is separately patentable from each other. However, in light of the failure of the references

to teach the claimed features, it is not necessary to discuss such separate patentability.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.


If there are any additional charges in connection with this present response, the Examiner is hereby authorized to charge Deposit Account No. 12-1095 therefor.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: August 5, 2005

Respectfully submitted,

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